

Serial No. 10/647,013

REMARKS

The applicants have amended certain descriptions in the Specification with the objective of presenting a full, clear and complete description of the cultivar in order to comply with 37 CFR 1.163 and 35 U.S.C. 112 and to overcome the objections listed in the Office Action dated 09/20/2004. Specifically:

In response to the objections set forth in paragraph A of the Office Action, the Specification has been amended to correct the error in which 'Pouldiram' was stated as being a pollen parent. Page 2 of the specification now states correctly that 'Pouldiram' is the seed parent.

In response to the objections set forth in paragraph B of the Office Action, the Specification has been amended to correct disclosure of the precise year that seeds from the hybridization began germination.

In response to the objections set forth in paragraph B of the Office Action, the Specification has been amended to correct the reference to the seed parent 'Pouldiram'. Page 2 of the original application incorrectly stated that 'Pouldiram' was the pollen parent.

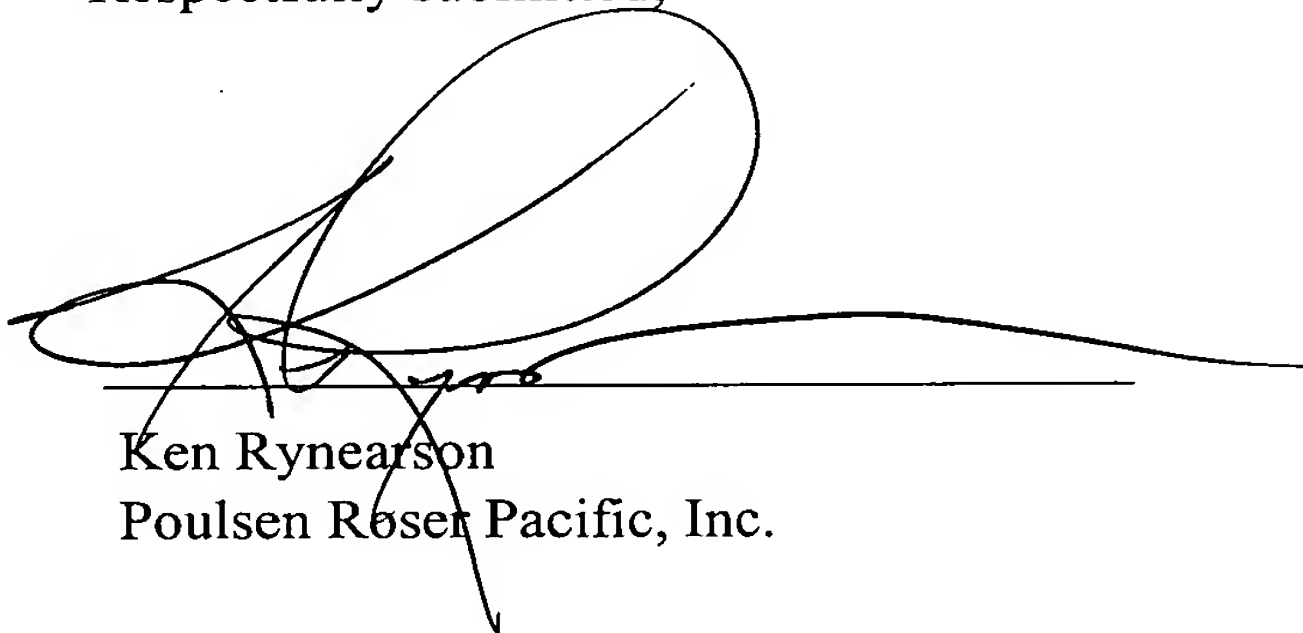
In response to the Examiner's rejection based on 35 USC § 102(b) the Applicants respectfully make the following statement:

For Seventy years following the enactment of the Plant Patent Act, the plant industry relied upon the established law that a publication describing a plant was not an enabling publication that could negate the possibility of securing plant patent protection upon that variety. For seventy years it had never been suggested that by the reason of the sale or otherwise making the plant publicly available in some part of the world outside of the United States such a publication is rendered "enabling" to bar a plant patent. Without any

discussion, the Patent Office, sometime in the year 2000, suddenly decided that a publication describing a plant, otherwise admittedly not enabling became enabling if the plant of a plant patent application had been on sale or made publicly available outside of the United States more than one year prior to the filing date of the application. Therefore, the Applicants respectfully challenge the Examiner's position as outlined in the Office Communication as being a substantive policy change without appropriate procedures under USC Title 5, Administrative Procedures Regulations; and other Federal rules and regulations which prohibit retroactive actions as outlined herein.

For all the reasons listed above, the applicants respectfully submit that the errors in the Specification are corrected, and that the claims comply with Section 112. The application is believed to be in condition for allowance, and notice thereof is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ken Rynearson', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

Ken Rynearson  
Poulsen Røser Pacific, Inc.